

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0599P
Gross Income & Adjusted Gross Income Tax
For the Years 1995, 1996, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation engaged in heating, ventilation and air conditioning manufacturing and sales. Taxpayer was purchased by another company in 1995 and has since operated as a subsidiary of the company. The company assumed that the taxpayer's inventory was on consignment and therefore exempt by taxpayer's construction of Indiana case law; however, upon Department audit, company learned that the inventory was for sale to Indiana customers. Therefore, for taxable year 1995, taxpayer was assessed gross income tax and penalty. Further, upon Department audit, it was discovered that taxpayer had rented an Indiana warehouse but that the rental expense was not part of taxpayer's apportionment factors due to an error that predated the acquisition. As a result, for taxable years 1996 and 1997, taxpayer was assessed adjusted gross income tax and penalty. All other issues have been resolved with the exception of the penalty, which taxpayer protests.

I. Tax Administration-Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10%) negligence penalty for all taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has provided sufficient information to establish that taxpayer exhibited reasonable care under the circumstances and therefore the penalty should be waived.

FINDING

Taxpayer's protest is sustained.